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ON PETITION

MCI COMMUNICATIONS CORP.  
1133 19TH STREET, NW  
WASHINGTON, DC 20036

In re Application of  
Bruce D. Elliott  
Application No. 09/063,544  
Filed: 21 April, 1998  
Attorney Docket No. COS-97-036

This is a decision on the petition filed 25 May, 2000, under 37 C.F.R. §1.137(b)<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

The record reflects that:

- while a courtesy copy of this decision is being forwarded to Carl J. Evens, Petitioner has not been empowered to prosecute this application before the Office, and the Office will not communicate with more than one representative of Applicant--nor will further communication be had with Mr. Evens until such time as such authority is filed;
- Petitioner failed to reply timely and properly to the non-final Office action mailed 27 April with response due on or before 27 July, 1999;
- the instant application went abandoned at midnight on 27 July, 1999;
- the Notice of Abandonment was mailed 21 December, 1999;
- an amendment was filed on 25 May, 2000, contemporaneously with the petition.

The record (including the petition filed on 25 May, 2000) does not necessitate a finding that the delay between midnight 27 July, 1999, and 25 May, 2000, was not unintentional.

Rather, the Patent and Trademark Office is relying on Petitioner's duty of candor and

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

good faith when accepting his representation the delay in response was unintentional.<sup>2</sup>

The application is being forwarded to Technology Center 3700 to await filing of Petitioner's Appeal Brief.

Telephone inquiries should be directed to Petitions Attorney John J. Gillon, Jr., at (703) 305-9199.



John J. Gillon, Jr.  
Attorney  
Office of Petitions  
Office of the Deputy Assistant Commissioner  
for Patent Examination Policy

cc:

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<sup>2</sup> See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).